

TECHNICAL MEMORANDUM

DATE: November 12, 2009
TO: Renton Planning Commission
FROM: David Sherrard, Parametrix
SUBJECT: Renton Shoreline Master Program
Overview of Comments Received
Public Hearing DRAFT Shoreline Master Program 10-15-09

This Technical Memorandum provides a general overview of the Comments Received on the Draft Shoreline Master Program dated October 9, 2009.

The following documents have been transmitted at this time:

- This Overview Memo addressing comments
- Copies of all letters received

Additional documents anticipated to be transmitted in the future include:

- Updated Matrix of Comments and Responses to include additional comments received on the October 9, 2009 Draft SMP
- Comments and responses on Revised Cumulative Impacts Analysis dated 10-09-09
- Comments and responses on Draft Restoration Plan dated 10-09-09

1. Request for specific revisions to text for clarification

A number of comments have been received from city staff and private parties commenting on specific provisions of the SMP that relate primarily to clarifications.

We will be working through these and incorporate appropriate changes in the next draft.

2. Comments from public agencies with expertise

To date, we have received comments only from the Washington Department of Fish and Wildlife (WDFW) on the Restoration plan and from the Department of Natural Resources (DNR) on dredging on public aquatic lands. The WDFW comments on the restoration plan are not critical of the content and will require only minor revision.

DNR comments indicate that they would not allow dredging of public aquatic lands to provide access to private recreational docks. They note many adverse effects of dredging and indicated that DNR is only obligated to permit dredging to maintain access to docks inside harbor areas used for commerce and navigation.

We are continuing to discuss with the Department of Ecology (Ecology) their concerns, to be addressed in future revisions. We anticipate that Ecology will provide us with written comments that the Planning Commission can review at later meetings.

3. Substantive issues relating to Shoreline Management Act (RCW 90.58) and Shoreline Guidelines (WAC 173-26) requirements

Very few comments were received that relate to the larger issues that the SMP must address were received.

a) No net loss

As indicated in our Overview Memo of October 9, 2009, achieving “no net loss” is a criteria applied also on a system-wide or cumulative basis, as succinctly noted in WAC 173-26-181(8)(d):

Local master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the act. To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities.

Of special concern is the decline of species currently listed under the Endangered Species Act. There is no evidence that the factors that have led to a decline in Chinook salmon have reversed.

As noted in the October 23, 2008 Tech Memo - Code Overview item 5 addressed cumulative impacts and relates to the findings of the Inventory/Characterization that existing bulkheads, docks, and vegetation management contribute to ecological decline reflected most significantly in declines in salmon populations, specifically nearshore rearing of Cedar River Chinook populations and the precipitous decline in sockeye beach spawning. We also know that pesticides commonly used in lawn maintenance can have an adverse impact on aquatic species. This was also discussed in topic 6 Provisions for existing development

We believe that the current SMP Draft addresses this issue in a variety of sections that work together to produce an improvement in functions. Changing individual sections must be evaluated in terms of how they affect this overall strategy.

One item we noted in the Overview Memo of October 9, 2009 is the potential effect of relaxing thresholds for single-family development, and that doing so results in fewer changes to the conditions that have led to a decline in salmon populations. There is a potential need for a greater contribution to be made on publicly owned land to improve near shore conditions to compensate for the change made in favor of single-family development.

An important issue for addressing no net loss is fairness. One of the mandates of the Shoreline Guidelines is to:

“...address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities.”

Any provisions that reduce the contribution of a particular property owner or class of shoreline properties may shift the burden to others.

Other issues raised by private parties regarding changes to regulations for dredging, for docks, and for shoreline protection also have similar consequences and are generally addressed below under the general responses to private party comments.

b) Vegetation Conservation/Critical Area Buffers

As indicated in our Overview Memo of July 22, 2009, the provisions for Vegetation Conservation in Section 4-3-090. G.1 provides two important functions:

- This section provides buffer functions for the Critical Area “Fish and wildlife habitat conservation areas” pertaining to shorelines.
- It is an important element of the strategy for achieving no net loss on a cumulative basis.

This item was addressed in the October 23, 2008 Tech Memo Renton Shoreline Master Program, Regulatory Approach Options – Specific Issues as item 2. We have incorporated in the proposed SMP two of the options:

- b. Strengthen the criteria and standards in the existing code on a general basis to provide for a level of enhancement that clearly improves ecological function, and
- c. Develop specific regulations based on the specific reaches

Also relevant is the October 23, 2008 Tech Memo - Code Overview as item 4, dealing with critical areas which references the Shoreline Guidelines in WAC 173-26-221(2) and references:

- a) The requirement that regulations in the SMP provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the local government's critical area regulations adopted pursuant to the Growth Management Act for comparable areas other than shorelines;
- b) Are consistent with the specific provisions of the SMA Guidelines for flood hazard reduction;
- c) Critical area regulations must be developed using scientific and technical information developed in the Inventory/Characterization as described in WAC 173-26-201 (2)(a).

It is important to note that 4-3-050-L.5.a.(i)(a) provides minimum buffers for Class 2 streams of 100 feet. These streams generally are of lower ecological productivity than larger streams in the shoreline. It would be extremely problematic to specify standards of less than 100 feet and meet the requirement of equal protection cited above.

As indicated in the discussion below, we do not believe evidence presented on the potential ecological functions of specific stream reaches is either scientifically accurate or convincing in providing a basis for a lesser standard.

c. Shoreline Stabilization

As discussed in the Technical Memo of July 22, 2009 and November 5, 2008 Technical Memo - Opportunities and Constraints for Maintaining and Enhancing Ecological Productivity, bulkheads have a variety of adverse impacts on shoreline functions including:

In effect, they often provide a barrier between the ecological interactions of the upland and water areas that include functions enumerated in the Inventory/Characterization and Cumulative Impact Analysis, including:

- Groundwater interflow
- Floodplain storage
- Sediment inputs and sediment storage
- Water quality functions of vegetation
- Water quality functions of wetlands
- Structural functions of large woody debris recruitment
- Temperature moderating functions of large vegetation
- Foodchain functions of vegetation on adjacent uplands

The recommended provisions in the Renton SMP are based on the specific findings of the Inventory/Characterization regarding ecological functions.

d. Non-Conforming Development

The October 23, 2008 Tech Memo - Code Overview item 5 addressed cumulative impacts and relates to the findings of the Inventory/Characterization that existing bulkheads, docks, and vegetation management contribute to ecological decline reflected most significantly in declines in salmon populations, specifically nearshore rearing of Cedar River Chinook populations and the precipitous decline in sockeye beach spawning. We also know that pesticides commonly used in lawn maintenance can have an adverse impact on aquatic species. This was also discussed in topic 6 - Provisions for existing development.

There is no evidence that the factors that have led to a decline in Chinook salmon have reversed.

The gradual replacement of non-conforming features, such as vertical bulkheads, and provision of elements such as shoreline vegetation, are critical to achieving no net loss.

The recommended provisions in the Renton SMP are based on the specific findings of the Inventory/Characterization regarding ecological functions especially as it relates to the critical near-shore environment and related uplands.

e. Standards for Density, Setbacks, and Height

Section 4-3-090. E.9. Standards for Density, Setbacks, and Height and Table 4-3-090. E.9 Shoreline Bulk Standards provide an integration of a number of features of the SMP relating to setbacks and Vegetation Conservation buffers as well as height and other dimensions.

As indicated in our July 22, 2009 Memo, there are several features of particular note:

Separate regulations are provided for the first 100 feet of shoreline – which is the standard “Vegetation Conservation” buffer and is the standard buffer in the previously adopted Critical Areas Regulations. The standards that apply within this area vary according to whether the entire area is anticipated as a buffer.

One critical element of how we structured provisions for the first 100 feet has been to avoid providing an incentive NOT to provide the buffer. If an applicant has the opportunity for a huge increase in floor area from less buffer area, the economic pressures to modify the buffers will be tremendous. This is reflected in provisions such as height where flexibility is allowed, but no additional floor area can result from that flexibility.

In general, the bulk regulations within the first 100 feet are somewhat lower than the next 100 feet, recognizing that less intense development on the shoreline is generally desirable. Standards for the second 100 feet are generally similar to the underlying zoning.

4. Public Comments

A number of public comments cover issues similar to those raised regarding earlier drafts. They point out a number of opportunities for clarification that will be incorporated in future revisions. For the most part, they don't indicate a need for substantial changes.

a. General Comments on RCW 82.02.020 and Court Cases on Takings

No new information is provided.

b. Old Stoneway Site

No substantive new information has been provided that changes the recommended approach for this reach of the Cedar River.

The central issue is the provision of public access and ecological enhancement if non-water dependent uses are to be located on this site. It is important to note that there is no requirement to accommodate non-water dependent uses within Shoreline Jurisdiction. The site also has enormous development potential outside of shoreline jurisdiction. The provisions in the Draft SMP are designed to provide for meaningful shoreline ecological enhancement.

New information provided by the applicant does not indicate that the standard buffers and other provisions in the Draft SMP are not appropriate for this site. Much of the site specific information provided in previous and new comments is appropriate for project-specific review. At the project level, standards such as setbacks and buffers are set based on the proposed use (if the proposal is water-oriented or non-water oriented). Similarly, shoreline protection alternatives are project specific and rely on a full analysis of site conditions related to both existing and proposed site conditions.

- The letter from Jeff Johnson establishes that shoreline protection will be needed in high energy portions of the site. It does not establish where and what character these features should have. He also does not address whether alternative locations and designs could enhance ecological functions.
- Dr. Kindig's letter does not address the potential for comprehensive ecological enhancement of the site. As indicted by Dr. Kindig, "The entire point of one portion of my September 8, 2009 letter (see page 3 of my letter) and of our report was to show that adding buffer beyond about 50 feet would not add more function where the bulkhead is deflecting the river's flow."ⁱ With this limited perspective assuming retention of bulkheads, the information does not address the issue of a

desirable standard for buffers given the potential for replacement of the bulkhead on all or part of the river frontage.

- Dr. Hadley's opinion that "... it is unreasonable to think a significant ecological benefit to the Cedar River at this location (if any benefit at all) could be achieved by replacing the bulkhead with a protective structure designed to provide an equivalent level of shoreline protection,"ⁱⁱ is similarly limited to a few functions.

Scientific information provided by the applicant regarding the Old Stoneway site does not provide an objective and integrated view of potential enhancement of ecological functions. The information provided is accurate in the narrow constraints of the analysis, but of limited scope.

It is important to recall that many provisions of the Draft SMP work together. The DRAFT SMP would require provision of a 100 foot buffer area in conjunction with appropriate shoreline protection. In addition, this likely would be combined with floodplain management provision that would limit the encroachment of the existing floodplain over greater portions of the site. The two provisions together would be expected to provide substantial benefits over almost a quarter of a mile of shoreline.

The issues that are raised include relevant substantive issues that are best addressed as part of future plans and studies.

The purpose of the SMP is not to pre-design an approach to the site but to establish the public goals and constraints in which the future development will occur.

c. Dredging of May Creek Delta

Information provided does not change the basic facts that the delta would be a very productive environment as concluded in the May Creek Basin Plan almost a decade ago.

"In the event that the mill property on the May Creek Delta redevelops in the future, opportunities to enhance May Creek habitat and reduce the need for maintenance dredging should be explored. Although a feasibility study of this option has not been undertaken, it is possible that modifying the May Creek channel could reduce the need for maintenance dredging and provide a unique opportunity to establish an improved habitat area within the lakeshore commercial area, allowing the realization of environmental and economic benefits."ⁱⁱⁱ

It is an appropriate application of the specific information contained in the Renton SMP Inventory/Characterization to develop standards unique to the city's ecological context, as opposed to provisions in other programs and in WAC 173-26. Technical information provided about ecological productivity at the present time reflects the half-century of on-going dredging that has degraded ecological functions.

It is the clear intent of RCW 90.58.020 to preserve natural processes. The formation of deltas is a natural process with clear benefits to the public interest. The changes that result from urbanization of portions of the watershed do not change the very real benefits of allowing delta formation.

As indicated by DNR comments, they do not believe that dredging of public aquatic lands would be allowed. Without extensive dredging of these public lands, limited dredging as allowed by current permits eventually will be ineffective in sustaining long term access.

We believe this is a clear case where statutory provisions for Shorelines of Statewide Significance (RCW 90.58.020) apply in providing SMP provisions that:

- Recognize and protect the statewide interest over local interest for Shorelines of Statewide Significance.
- Preserve the natural character of the shorelines.
- Result in long-term over short-term benefits.
- Protect the resources and ecology of the shorelines.

d. Southport Site

A large number of comments were received about the Southport site regarding presumed restrictions on future moorage and other uses.

There are no specific restrictions to the Southport site, and in fact, the provisions of the SMP emphasize water dependent uses and public access.

The appropriateness of future moorage and other uses on or adjacent to the water would be reviewed in accordance with the provisions of the SMP, which do not preclude such uses if the relevant criteria are met.

The City is continuing to review the relevance of past development agreements and master programs and will report their conclusions to the Planning Commission at a later meeting.

ⁱ Dr. Kindig, *Shoreline Master Program Update; Cedar River Reach 3; Old Stoneway Site*, comment letter received November 5, 2009, p.5.

ⁱⁱ Dr. Hadley, *Old Stoneway Site- Bulkhead Replacement Considerations*, comment letter received November 5, 2009, p.4.

ⁱⁱⁱ King County, *May Creek Basin Action Plan*, April 2001, p. 3-23.